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13 Attorneys for Plaintiff
14 BROCADE COMMUNICATIONS SYSTEMS, INC.

15 UNITED STATES DISTRICT COURT
16
17 NORTHERN DISTRICT OF CALIFORNIA
18
19 SAN FRANCISCO DIVISION

20 17 IN RE BROCADE COMMUNICATIONS
21 SYSTEMS, INC. DERIVATIVE LITIGATION

22 This Document Relates to:

23 ALL ACTIONS

24 Case No. C 05-02233 CRB

25 STIPULATION AND [PROPOSED] ORDER
26 AMENDING SECOND AMENDED
27 COMPLAINT BY DISMISSING TWO CAUSES
28 OF ACTION AS TO DEFENDANTS NEAL
DEMPSEY AND SETH D. NEIMAN

29
30 STIPULATION AND [PROPOSED] ORDER AMENDING
31 SECOND AMENDED COMPLAINT BY DISMISSING TWO
32 CAUSES OF ACTION AGAINST DEMPSEY AND NEIMAN

1 WHEREAS, on August 1, 2008, Brocade Communications Systems, Inc. (“Brocade” or
2 the “Company”), by and through the Special Litigation Committee of Brocade’s Board of
3 Directors (the “SLC”), filed a Second Amended Complaint in this action (Dkt. No. 220); and

4 WHEREAS the Second Amended Complaint asserts against defendants Neal Dempsey
5 and Seth D. Neiman (and other defendants) causes of action for, *inter alia*, “Breach of the
6 Fiduciary Duty of Loyalty – Self Dealing” (the “Sixth Cause of Action”) and “Unjust
7 Enrichment” (the “Eleventh Cause of Action”); and

8 WHEREAS the SLC has decided not to pursue the Sixth Cause of Action and the
9 Eleventh Cause of Action against defendants Dempsey and Neiman; and

10 WHEREAS Federal Rule of Civil Procedure 15(a)(2) permits a party to amend an
11 amended pleading “only with the opposing party’s written consent or the court’s leave”;

12 NOW, THEREFORE, the parties to this Stipulation agree as follows:

13 Pursuant to Federal Rule of Civil Procedure 15(a)(2), the Sixth Cause of Action and
14 Eleventh Cause of Action shall be and are dismissed without prejudice solely as to defendants
15 Neal Dempsey and Seth D. Neiman.

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2 Dated: September 26, 2008
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DEWEY & LEBOEUF LLP

4 /s/ Peter E. Root
5 Peter E. Root
6 Attorneys for Plaintiff Brocade Communication
7 Systems, Inc.
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9 K&L GATES LLP
10

11 /s/ Jeffrey L. Bornstein
12 Richard M. Phillips
13 Jeffrey L. Bornstein
14 Ramiz I. Rafeedie
15 Attorneys for Defendant Neal Dempsey
16

17 WILMER CUTLER PICKERING HALE AND
18 DORR LLP
19

20 /s/ Jonathan A. Shapiro
21 Michael A. Mugmon
22 Jonathan A. Shapiro
23 Jeffrey B. Rudman
24 Attorneys for Defendant Seth D. Neiman
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ATTESTATION PURSUANT TO GENERAL ORDER 45

2 I, Peter E. Root, attest that concurrence in the filing of this document has been obtained
3 from the other signatories. I declare under penalty of perjury under the laws of the United States
4 of America that the foregoing is true and correct. Executed this 26th day of September 2008 at
5 East Palo Alto, California.

Dated: September 26, 2008

DEWEY & LEBOEUF LLP

/s/ Peter E. Root

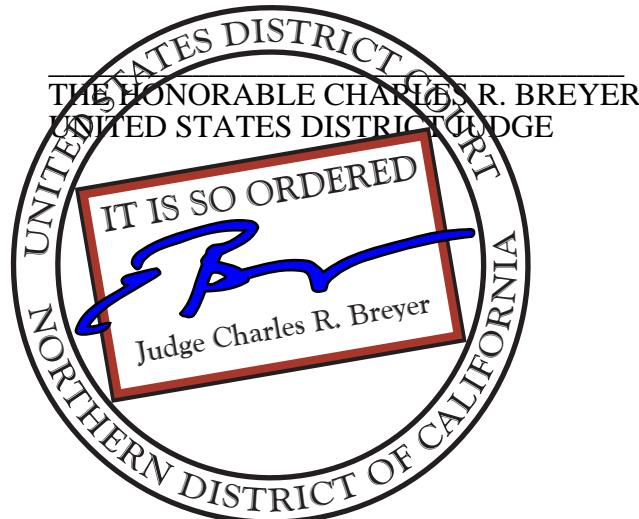
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Attorneys for Plaintiff
BROCADE COMMUNICATIONS
SYSTEMS, INC.

1 **[PROPOSED] ORDER**

2 Upon Stipulation of the Parties and good cause appearing therefor, IT IS SO ORDERED.

3 Dated: October 1, 2008



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